

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2002-122

December 5, 2002

PUBLIC UTILITIES COMMISSION  
Investigation into Potential Violations of  
State Laws and Commission Rules by  
WebNet Communications, Inc.

PROCEDURAL ORDER NO. 5

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This Procedural Order contains four rulings.

1. WebNet's objection to the Examiner's proposal to defer ruling on its Motion to Compel until after depositions of Prosecutorial Staff witnesses is overruled. WebNet's request that depositions be delayed until at least 3 days following the provision of any further answers to its interrogatories (if any parts of its Motion to Compel is granted) is denied.<sup>1</sup> No action will be taken on the Motion to Compel until after the depositions of Prosecutorial Staff witnesses and after WebNet filed a revised motion. Deferral is likely to save considerable time for the parties and, not least, the Examiner in having to go through each interrogatory, one by one, to determine whether it is necessary to order the Prosecutorial Staff to be more specific (for the first group of responses that WebNet claims is insufficient) or more complete (for the second group of responses). WebNet has correctly pointed out that depositions and interrogatories are different and may have different functions. I see no undue prejudice to WebNet, however, from receiving an answer (if it is entitled to answer beyond those already provided) in a deposition (which will be reduced to writing in a transcript) as opposed to an answer in writing to an interrogatory (data request). I am not aware of any authority that supports WebNet's position that the purpose of interrogatories is to prepare for depositions. It is the purpose of both interrogatories and depositions to prepare for trial or hearing.

It is common in practice before the Commission for parties (and Commission advisory staff) to conduct "technical conferences" (in reality discovery conferences), at which parties ask representative of other parties new questions (which

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<sup>1</sup> In addition to WebNet's request that depositions be delayed until at least 3 days following the provision of any further answers to its interrogatories (denied above), WebNet also argued that "Substantive proceedings should not be routinely continued until that fundamental issue [the issues raised in its Motion to Determine Jurisdiction] is resolved by final order of the courts if necessary." I do not read this statement as a renewed request by WebNet that all proceedings be halted. The request to delay depositions for a specific short period, as well as its requests that Staff be required to respond to the Motion to Compel by December 6 and that there be a teleconference, all indicate that WebNet is not specifically asking for reconsideration of the ruling contained in the Procedural Order issued on November 8.

resemble a deposition process) and follow-up questions to previously answered data requests (interrogatories). The technical conference is a discovery device that has been used by the Commission for several years without complaint.

At the depositions WebNet shall seek responses to which it is reasonably entitled, and the Prosecutorial Staff shall make every reasonable effort to provide answers to reasonable requests.

Prosecutorial Staff, in the last of the series e-mails that constitutes the argument on these issues stated that it believes that "all" of WebNet's interrogatories are objectionable on the ground of relevance. All parties are reminded that although "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending action..." "[I]t is not ground for objection that the information sought will be inadmissible at trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence." M.R.Civ.P. 26(b)(1).

I have had some doubt about the relevance of the questions relating to penalties imposed by the Commission in other cases, at least at this time. I suggest that the parties not spend too much time on this subject matter (unless Prosecutorial Staff wishes to agree to some of the "admissions" proposed alternatively by WebNet or unless WebNet indicates a willingness to admit (or not contest) violations and proceed directly to a penalty stage). It may make sense to defer detailed discovery on this matter to such time as there is a penalty stage, if that ever occurs.

2. To the extent that issues concerning the answers to WebNet's interrogatories remain after the depositions, WebNet shall file a revised motion. I will then set a time for a teleconference. Prosecutorial Staff may, but is not required to, file a response that contains argument about each of WebNet's remaining requests. Prosecutorial Staff shall file a written response identifying any of WebNet's requests for an orders to compel to which Prosecutorial Staff does not object.

3. WebNet's responses to the Examiner's Data Request shall be due no later than noon on Thursday, December 12, 2002. I apologize for the confusion caused by the deadline contained in the copy I sent by e-mail on November 27 (I do not know how that got in there). The correct date (December 5, now extended) was contained in the mailed copy that WebNet received on Tuesday.

4. The Amended Procedural Order of November 15, 2002) established a deadline of December 6, 2002, for WebNet to file a Motion in Limine to challenge the admissibility of evidence proposed by Prosecutorial Staff. That deadline is extended to one week after the issuance of the Commission's order addressing WebNet's Motion to Determine Jurisdiction, if there is still a proceeding at that time. I clarify the footnote in the Amended Procedural Order. The footnote states that the deadline "does not preclude later challenges to *later-developed* Prosecutorial Staff evidence." (emphasis

added) In at least one teleconference, the Prosecutorial Staff indicated that it intended to offer the Staff Report as evidence. If WebNet wished to challenge the admissibility of the Staff Report, it must do so by the deadline established in this Procedural Order.

Dated at Augusta, Maine, this 5th day of December, 2002.

BY ORDER OF THE HEARING EXAMINER

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Peter Ballou  
Hearing Examiner

